

**Notice of Allowability****Application No.**

10/768,545

**Applicant(s)**

WEBER, GERHARD PETER

**Examiner**

Medina A Ibrahim

**Art Unit**

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the telephone interview of 12/06/04.
2. ☒ The allowed claim(s) is/are 1-30.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 4/30/04
4. ☒ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 12/2/04
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Steven Callistein on 12/02/04.

The application has been amended as follows:

In The Claims:

At claim 1, "Seed" has been replaced with ---A seed---.

At claim 6, ---produced--- has been inserted after "are" in line 1.

At claim 7, ---maize--- has been inserted before "inbred" in line 2.

At claim 13, the colon in line 2 has been deleted.

At claim 21, "stearyl-ACP desaturase" has been replaced with --- stearoyl-ACP desaturase---.

Claim 22. (Currently Amended) A maize plant having modified fatty acid metabolism or modified carbohydrate metabolism produced by the method of claim 21.

At claim 26, the colon in line 2 has been deleted.

At claim 29, part (a), " or inhibiting" and "stearyl-ACP desaturase," have been deleted; and ----, or encoding an antisense stearoyl-ACP desaturase--- has been inserted before the semicolon.

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Claim 30. (Currently Amended) A plant having modified fatty acid metabolism, modified phytic acid metabolism or modified carbohydrate metabolism produced by the method of claim 29, wherein the plant comprises the nucleic acid molecule and has all of the physiological and morphological characteristics of maize inbred line PH77N listed in Table 1 as determined at the 5% significant level when grown in the same environmental conditions.

### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: The claims are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest a maize line with all of the genetic complement and morphological traits of PH77N as listed on Table 1 on pages 56-59 of the specification, and methods of its use in breeding. The closest prior art is the maize line PHBFO of Livesey (US 5,728, 919; Applicant's IDS). Livesey teaches a maize line which shares with the instantly claimed inbred maize line many characteristics such as Dent type, yellow aleurone, dark-green leaf, red anther and red silk, horizontal ear position, number of tillers per plant, leaf sheath pubescence, medium husk extension (2), distinct kernel rows, and resistance to leaf blights such as Northern leaf blight and Eyespot, and resistance to Fusarium and Gibberella ear diseases. However, the instantly claimed maize line PH77N differs from the prior art plant in that it has red glumes, light red cob, average ear taper, white dry husk, medium green fresh husk, slightly curved row alignment, and resistance to Head smut, and maize Dwarf mosaic virus; and different morphological characteristics including a different plant height, ear height and length, and tassel length.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**REQUIREMENT OF ALLOWANCE UNDER 37 CFR 1.801-1.809**

The Deposit Statement on page 55 of the specification is deemed in accordance with 37 CFR 1.801-1.809. Since the application is otherwise in condition for allowance except for the needed deposit of seed, and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR 1.809(c)).

As set forth in 37 CFR 1.809(c), Applicant is required to deposit 2500 seeds of the claimed plant within THREE (3) MONTHS of the mail date of this letter; thus the time for making the deposit is on or before the payment of the issue fee. Although the time period for paying the issue fee cannot be extended, the time period for satisfying the deposit requirement may be extended under the provisions of 37 CFR 1.136. Failure to make the needed deposit of 2500 seeds will result in abandonment of the application for failure to prosecute.

Applicant is reminded that once the deposit of seed has been made, information regarding the date of deposit, description of the deposited material including number of seeds deposited, name and address of the depository, and the accession number must

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be added to the specification in order to comply with 37 CFR 1.809(d). In addition, the claims must be amended to replace the blank " XXXX " with the appropriate Accession Number. Amendments to the specification and the claims must be filed under 37 CFR 1.312. If these amendments are received after payment of the issue fee, these amendments must be accompanied by a petition and fee, and a showing of good and sufficient reasons why these amendments were not presented earlier.

### **Contact information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (571) 272-0797. The Examiner can normally be reached Monday -Thursday from 8:00AM to 5:30PM and every other Friday from 9:00AM to 5:00 PM. Before and after final responses should be directed to fax nos. (703) 872-9306 and (703) 872-9307, respectively.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr. Amy Nelson, can be reached at (571) 272-0804.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

12/2/04  
Mai

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP 180 / 1638

